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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/765,953

01/29/2004

Nicholas Paul MacMillan

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21395 7590 12/16/2008

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EXAMINER

HALL, DEANNA K

ART UNIT

PAPER NUMBER

3767

MAIL DATE

DELIVERY MODE

12/16/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/765,953	Applicant(s) MACMILLAN ET AL.	
	Examiner DEANNA K. HALL	Art Unit 3767	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 September 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-4,6-11,16-18 and 24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-4,6-11,16-18 and 24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☒ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Acknowledgments

1. This office action is in response to the reply filed on September 4, 2008.
2. Claims 2-4, 6-11, 16-18 and 24 are pending in the application.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. **Claims 24, 2-4, 6-8, 16-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Hanson (US 5,919,174). Hanson discloses a suction catheter assembly comprising:**

A suction catheter 72; a valve 11 comprising a housing defining a first bore 25 in communication with said suction catheter Fig. 4 and a second bore 17 extending to an outlet opening into the first bore through an aperture (dashed line 49) Fig. 1; a valve member 27 having a sealing surface 38 and being slidable in alignment with the first bore from a first position to allow unobstructed fluid flow from the suction catheter along the first bore to the second bore and to a second position to block fluid flow from said suction catheter to the bores C4 L24-37. Said valve includes a rotatable locking member 15, 57 operable to prevent movement of said valve member C4 L38-48. The

locking member is mounted on said housing and includes an external surface formation 63, the locking member 57 is rotatable between a first position in which said surface formation is out of alignment with a part of said valve member and said valve member is free for sliding movement to a second position where said surface formation is in alignment with said part of said valve member so as to hinder movement of the valve member C4 L38-48.

A helical spring 31 arranged to urge the valve member to a second position C4 L24-28.

The valve member engages a tapered sealing formation 53 in the housing in the second position.

A cylindrical sleeve 37, 38 has an outwardly-projecting annular flange arranged to make a wiping seal with a bore 39, 40 in said housing.

Second bore 17 is inclined at an angle relative to the first bore; substantially 45 degrees C4 L11-15.

The housing has two walls and the locking member includes two projections that form a continuation of the two walls when the locking member is in a position to enable movement of the valve member, See Figs. 2-3.

The locking member 15 displaces the valve member by a short distance towards a sealing formation 37, 38 when the locking member is moved to its locked position C4 L24-28.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hanson in view of Decloux et al. (US 5,320,328) ("Decloux").

Hanson shows as discussed above. Hanson does not directly show a plate member arranged for manual engagement and slidably located in a channel extending along an outer surface of the housing. Decloux, in the analogous art, teaches a plate member 34 slidably located in a channel 24 on the outer surface of the housing. Therefore it would have been obvious to a person having ordinary skill in the art at the time the invention was made to have modified the device of Hanson with the plate member and external channel as taught by Decloux for another way to manually actuate the valve.

7. Claims 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hanson in view of Decloux further in view of Steigerwald (US 3,828,982).

The combination of Hanson and Decloux shows as described above. Hanson/Decloux does not directly show walls protecting the plate member. Steigerwald, in the analogous art, teaches a safety actuator with walls surrounding the actuator, see Fig. 3. Therefore it would have been obvious to a person having ordinary skill in the art at the time the invention was made to have modified the device of

Hanson/Decloux with the walls as taught by Steigerwald for preventing inadvertent contact with the actuator when the valve is gripped.

8. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hanson.

Hanson discloses the claimed invention except for the housing being made of transparent material. It would have been obvious to a person having ordinary skill in the art at the time the invention was made to form the housing of transparent material since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 227 F.2d 197, 125 USPQ 416 (CCPA 1960).

Response to Arguments

9. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DEANNA K. HALL whose telephone number is (571)272-2819. The examiner can normally be reached on M-F 9:00am-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Simons can be reached on 571-272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/Deanna K. Hall/
Examiner, Art Unit 3767
12/9/08
/Kevin C. Sirmons/
Supervisory Patent Examiner, Art Unit 3767